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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,574	04/15/2004	Kurt Brooks Uhler	N0189US	8870
37583 7590 09/23/2008 NAVTEQ NORTH AMERICA, LLC 425 West RANDOLPH STREET SUITE 1200, PATENT DEPT CHICAGO, IL 60606				
EXAMINER				
HU, KANG				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
09/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/825,574

Applicant(s)

UHLIR ET AL.

Examiner

KANG HU

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2-8, 11-14, 17-19, 23 and 36-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: continued.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Robert E Pezzuto/
Supervisory Patent Examiner, Art Unit 3714

Applicant's arguments filed 8/14/2008 have been fully considered but they are not persuasive. The applicant specially points out that the office action is in error when it states that fry discloses comparing the first performance to a second performance, wherein the second performance is along the second course. The applicant also points out that there is no mention or suggestion of comparing a performance on one course with a performance on another course in a different geographic location. The examiner respectfully disagrees with the statements made above. First the examiner would like to point out that claim 36 recites "using a geographic database that contains data that represents geographic features in the first geographic area to compare to the geographic features of the first course to the geographic features of a second course located in a second geographic area different from the first geographic area ... comparing the first performance to a second performance etc." One of ordinary skill in the art understands that what is being compared is not where the race is taking place, rather the factors that surrounds the race such as the physiological conditions of the athlete, the road conditions such as curves, changing altitude and weather conditions such as temperature, humidity and wind speed/direction that effects an athlete's performance. Fry specifically teaches that in col 1, lines 55-60, disclosing that a device for monitoring and comparing present, past and ideal performance on an exercise machine such as a bicycle. Fry further explains that the user rides on many different routes in col 2, lines 5-10. Fry's whole invention relies upon its ability to monitor the performance of an athlete based on geographic location information such as altitude, longitude and latitude, also the athlete's physiological performance and weather conditions such as temperature and wind speed/direction, the many different factors that surround the performance of an athlete. The examiner asserts that Fry indeed teaches of comparing the performance of performance at two different locations, beside the point that Fry actually explicitly teaches of comparing present, past and ideal performance on different routes, one of ordinary skill in the art would also recognize that because no two races are the same because there can never be the exact same geographical (the athlete can pick different points of travel, such as if the athlete uses the apex or the outside loop in passing someone), physiological condition (one's body will never perform exactly the same even in the identical simulation), weather condition and other factors that surround the performance. Therefore the applicant's argument is not persuasive.